

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKAURAU ROHE**

[2020] NZERA 192
3079832

BETWEEN

CHRISTOPHER MILLER
Applicant

AND

SALT SEARCH NZ LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Applicant in person
Phil Ahern, counsel for Respondent

Investigation Meeting: On the papers

Submissions and Further Information Received: Over the period 4 November 2019 to 5 July 2020 from
Applicant and Respondent

Date of Determination: 14 July 2020

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Joining Salt Search NZ Limited

[1] Salt Search NZ Limited (“Salt”) named in the intituling has been joined by the Authority under s 221(b) of the Employment Relations Act 2000 (the Act) as the only Respondent.

Replacement determination

[2] This determination replaced the previous re-called determination, so it has been issued under the same determination number. In addition to joining Salt as the only Respondent the Authority has also struck out of these proceedings those named by Mr Miller as “the Respondent” in his Statement of Problem.

Problem with the way Mr Miller identified the respondent in his Statement of Problem

[3] This determination solely addresses the various issues that have arisen from the way Mr Miller has named the respondent in his Statement of Problem. This determination has been necessary because Mr Miller has refused to address those issues himself.

[4] In his Statement of Problem Mr Miller identified the “respondent” as follows:

“Angela Gichard – Salt Recruitment Joseph Taylor – Vector Sarah Burt - OfficeMax”

[5] Mr Miller named three individuals and used what appears to be shortened trading names of three different well-known companies as the “Respondent” in this matter. The Authority has assessed each name Mr Miller recorded in his Statement of Problem as a possible respondent.

[6] Mr Miller has had the deficiencies in his Statement of Problem identified to him. He has had the reasons these deficiencies cause problems explained to him. He has been informed about how he can address these deficiencies and he has been given a lengthy period of time to enable him to do so.

[7] Mr Miller has been encouraged to file an Amended Statement of Problem that resolves the identity of the employer issue. He has been given options that would have enabled him to have obtained free legal advice, had he wanted to do so.

[8] The Authority has put Mr Miller on notice if he did not address the problem associated with the way he had named the respondent in the Statement of Problem then the Authority would need to resolve the problem before his substantive claim could be progressed. This determination does that.

Strike out

[9] The Authority was not satisfied that it has jurisdiction to investigate this matter based on the respondent named/identified in the Statement of Problem dated 30 October 2019.

[10] Mr Miller has not claimed he was ever in an employment relationship with Angela Gichard and/or Joseph Taylor and/or Sarah Burt and there is no information to suggest that an employment relationship existed between any of them and Mr Miller. Nor has Mr Miller sought any relief against these three named individuals, over which the Authority has jurisdiction, in his Statement of Problem.

[11] These three individuals should not be named respondents in this matter.

[12] Accordingly, the Authority orders under s 221(a) of the Act that Angela Gichard, Joseph Taylor and Sarah Burt be struck out as parties to these proceedings.

[13] On 24 January 2020 Mr Miller informed the Authority that he did not want to pursue a claim against “Vector”. Vector is therefore struck out as a party to these proceedings.

[14] The Authority also orders under s 221(a) of the Act that “*OfficeMax*” be struck out as a party to these proceedings. The Authority cannot investigate or determine claims against a respondent who is identified solely by a trading name, because a trading name does not exist in the legal sense.

[15] Mr Miller has been repeatedly invited and encouraged to file an Amended Statement of Problem to resolve the trading name problem, however he declined to do so, thereby resulting in this strike out order.

[16] That leaves “Salt Recruitment” which is also a trading name, with no legal status or identity. It is also struck out as a party to these proceedings for that reason.

Who is the correct Respondent?

[17] The legal entity “Salt Search NZ Limited” (Salt) has identified itself as Mr Miller’s employer.

[18] Ms Angela Gichard, who at the material time was employed as Salt’s Country Director, has filed an affidavit dated 25 June 2020.

[19] The “Individual Agreement (Temporary Staff)” Mr Miller signed on 5 August 2019 named “Salt” as a party and was signed “for an on behalf of Salt”.

[20] Ms Gichard said that Mr Miller’s employment agreement should have named “Salt Search NZ Limited” as the employer’s full legal name at the beginning of the agreement and thereafter referred to the employer as “Salt” throughout the rest of the employment agreement.

[21] Ms Gichard said that Salt submitted Mr Miller’s details to the Inland Revenue Department (IRD) and kept wage and time records and holiday and leave records for him. Salt

also paid Mr Miller and it issued payslips to Mr Miller that named Salt Search NZ Limited as his employer.

[22] Mr Miller did not dispute any of this evidence.

[23] The Authority is therefore satisfied on the balance of probabilities that Salt Search NZ Limited employed Mr Miller. It is therefore the correct legal entity that should be the named respondent in this matter.

Joining of employer as a party

[24] In order to more effectively dispose of this matter, the Authority on its own motion under s 221(b) of the Act, issues an order that amends the name of the respondent in these proceedings from the trading name of “Salt Recruitment” and/or the mix of names recorded in the Statement of Problem to Salt’s full legal name of “Salt Search NZ Limited”.

[25] This order under s 221(b) of the Act was necessary to enable this matter to proceed, in light of the impasse that has occurred, because it has effectively remedied the defect regarding the legal identity of the respondent named by Mr Miller in his Statement of Problem.

Changes to intituling in these proceedings

[26] The intituling of this determination has been formally amended by the Authority (because Mr Miller declined to do it himself) to reflect the party the Authority has joined as the Respondent (Salt), instead of those named as “the respondent” by Mr Miller.

[27] Accordingly the intituling for these proceedings is amended under s 221(a) and (b) of the Act, by striking out the respondent as currently named in the Statement of Problem dated 30 October 2019, and substituting it with “Salt Search NZ Limited”, as the only respondent in these proceedings.

[28] Costs are reserved pending resolution of the substantive dismissal grievance.

Rachel Larmer
Member of the Employment Relations Authority